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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

5 In re

Case No. 09-10131-A-13

6 CESAR BETANCOURT,

7 Debtor.
8

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
RE ORDER TO SHOW CAUSE DIRECTED TO WILLIAM E. EDWARDS, JR.**

10 A hearing was on April 9, 2009, on the court's order
11 directed to William E. Edwards, Jr., to show cause why he should
12 not be sanctioned and/or ordered to disgorge fees for failure to
13 fulfill his professional obligations in representing the debtor.
14 Following the hearing, the court took the matter under
15 submission. This memorandum contains findings of fact and
16 conclusions of law required by Federal Rule of Bankruptcy
17 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a
18 core proceeding as defined in 28 U.S.C. §157(b) (2).

19 The chapter 13 petition initiating this case was filed
20 January 8, 2009. Edwards signed the petition as attorney for the
21 debtor. The petition discloses that the debtor had filed a prior
22 bankruptcy case in 2001 in the Central District of California.
23 The petition fails to disclose that Betancourt, with Edwards as
24 his attorney, had also filed a chapter 13 case on August 15,
25 2008, as Case No. 08-14931, in the Eastern District of
26 California. That case was ultimately dismissed on October 14,
27 2008, within one year of the filing of the present case.

28 The Disclosure of Compensation of attorney for the debtor

1 filed in conjunction with the petition shows that prior to filing
2 of the petition, the debtor paid Edwards the sum of \$3,500 for
3 "legal services for all aspects of the bankruptcy case."

4 Paragraph 6 of the Disclosure of Compensation purports to exclude
5 "representation in adversary and contested matters."

6 Because this is a chapter 13 case, the debtor and Edwards
7 executed a "Rights and Responsibilities of Chapter 13 Debtors."
8 That document was filed on January 8, 2009. It states that after
9 the case is filed, the attorney agrees to provide the legal
10 services that are specifically enumerated in the Rights and
11 Responsibilities. Included in these legal services is the duty
12 to represent the debtor in motions for relief from stay. Also
13 included is the attorney's duty to provide "such other legal
14 services as are necessary for the administration of the present
15 case before the Bankruptcy Court." The Rights and
16 Responsibilities indicates that Edwards had agreed to
17 compensation of \$3,500, none of which had been paid before the
18 petition was filed. The Disclosure of Compensation required
19 pursuant to Bankruptcy Code § 329(a) and Fed. R. Bankr. P.
20 2016(b) reflects that Betancourt had agreed to pay Edwards \$3,500
21 but that no amount had been paid prior to the filing of the
22 petition.

23 Because a prior case had been dismissed within one year of
24 the filing of the petition, the automatic stay as to the debtor
25 terminated thirty days after the date of filing the petition. 11
26 U.S.C. § 362(c)(3). Although the Bankruptcy Code provides the
27 opportunity for a debtor in that circumstance to seek to extend
28 the stay, Edwards never made such a motion.

1 A secured creditor, Karyn Cain, moved for relief from stay
2 as to the chapter 13 trustee. Cain was aware that no stay was in
3 place as to the debtor with respect to her.

4 A hearing was held on Cain's motion for relief from stay as
5 to the trustee. The debtor, Cesar Betancourt, appeared. Edwards
6 did not appear. The motion was granted as the trustee. It was
7 moot as to the debtor, because the stay had already terminated as
8 to the debtor. The hearing on this motion was March 12, 2009.
9 Following the hearing, the court issued an Order to Show Cause to
10 Edwards with respect to his failure to appear at the hearing on
11 the motion for relief from stay.

12 At the hearing on the Order to Show Cause, Deanna Hazelton,
13 the attorney for the chapter 13 trustee, testified. She
14 testified that at the meeting of creditors under Bankruptcy Code
15 § 341, the debtor asked if a foreclosure by Cain could take place
16 now that the petition was filed. Edwards told the debtor not to
17 worry because the stay was still in effect. Hazelton suggested
18 that the debtor and Edwards double check that advice. Hazelton
19 then telephoned the attorney for the secured creditor to state
20 that it was the trustee's view that the stay was still in effect
21 as to the trustee.

22 Edwards had a duty to represent Betancourt in connection
23 with the motion for relief from stay. The outcome of that motion
24 was crucial to any effort to confirm a plan in the chapter 13
25 case. Rule 83-182 of the United States District Court for the
26 Eastern District of California, is incorporated as a local rule
27 of this court by Local Rule 1001-1(c). That rule sets forth
28 requirements for an attorney to withdraw from representing a

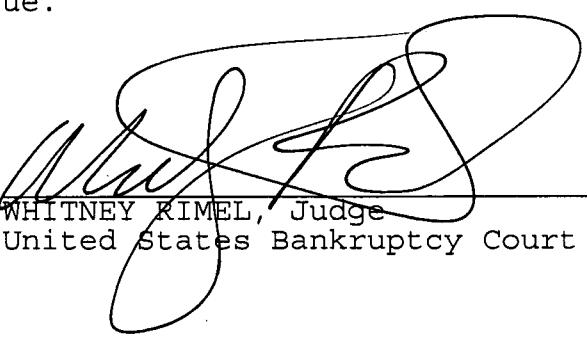
1 client. A noticed motion is required for an attorney to
2 withdraw. No motion for authority to withdraw has been filed in
3 this case. In this case, Edwards was responsible for
4 representing Betancourt in connection with motions for relief
5 from stay and should have known that it would be necessary to ask
6 the court to extend the automatic stay with respect to the
7 debtor.

8 Under the circumstances, the compensation received by
9 Edwards exceeds the reasonable value of those services. It is
10 appropriate to reduce the fee charged. See Bankruptcy Code
11 § 329(b). However, in this case, no fee was ever paid to
12 Edwards. The case was ultimately dismissed because the debtor
13 had failed to make payments into the plan.

14 Edwards appeared in person at the hearing on the Order to
15 Show Cause. This required a considerable trip, as his office is
16 located in Bakersfield, California, and the court is located in
17 Fresno, California. Under the circumstances, the court deems the
18 time incurred by Edwards in attending the hearing on the Order to
19 Show Cause a sufficient sanction for his failure to represent
20 Betancourt in connection with the hearing on the motion for
21 relief from stay.

22 A separate order will issue.

23
24 DATED: July 17, 2009

25 
26 WHITNEY KIMEL, Judge
27 United States Bankruptcy Court
28

1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA)
3 COUNTY OF FRESNO) ss.

4 I am a citizen of the United States and a resident of the
5 county aforesaid; I am over the age of eighteen years and not a
6 party to the within above-entitled action; my business address is
7 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721.

8 On July 17, 2009, I served the within document on the interested
9 parties in said action by placing a true copy thereof enclosed in
10 a sealed envelope with postage thereon fully prepaid, in the
11 United States mail at Fresno, California, addressed as follows:

12 William E. Edwards, Jr.
428 Chester Ave.
13 Bakersfield, CA 93301

14 Cesar Betancourt
1771 York Mountain Court
15 Tulare, CA 93274

16 Michael H. Meyer
Chapter 13 Trustee
17 P. O. Box 28950
Fresno, CA 93729-8950

18 Mark Pope, Esq.
19 Office of the United States Trustee
1401 U. S. Courthouse
20 2500 Tulare Street
Fresno, California 93721

21 I certify (or declare), under penalty of perjury, that the
22 foregoing is true and correct. Executed on July 17, 2009, at
23 Fresno, California.

24 
25 Kathy Jones
26 Kathy Torres, PLS